

Appln. No. 10/824,716
Amendment dated May 13, 2008
Reply to Office Action mailed March 5, 2008

REMARKS

Reconsideration is respectfully requested.

Claims 1 through 16 remain in this application. No claims have been cancelled. No claims have been withdrawn. No claims have been added.

Parts 1 through 4 of the Office Action

Claims 1 through 7, 13 and 16 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blumberg in view of Milsted.

Claims 8, 9 and 10 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blumberg in view of Milsted and further in view of Official Notice.

Claims 11, 12 and 14 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blumberg.

Claim 15 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Blumberg in view of Official Notice.

Turning first to the Response to Arguments section of the pending Office Action, it is stated that that:

The applicant argues that Milsted does not disclose presenting a sample of an uncompleted version of the work product. This argument misinterprets the rejection. Milsted is relied upon for presenting a sample. Blumberg is relied upon for a vote on an uncompleted version of the work product - see col. 1 paragraphs 14 and 15, "designing the product or service is according to a predetermined level of votes received for different criteria of the product" and "permitting a product with design criteria to subsequently be manufactured." Blumberg also teaches putting design criteria online. Milsted teaches an online sample in col. 81 near line 47. Thus the combination teaches presenting a sample of an uncompleted version of the work product.

Appln. No. 10/824,716

Amendment dated May 13, 2008

Reply to Office Action mailed March 5, 2008

Looking to the referenced portions of the Blumberg publication, it states at paragraphs [0014] and [0015] that (emphasis added):

[0014] A system for facilitating group decisions by customers about a decision to purchase a product or service meeting designated design criteria is provided. There is a computer network, preferably including the Internet, having design criteria relating to a product or service. Designing the product or service is according to a predetermined level of votes received for different criteria of the product. Customers commit funds to purchase the product or service in terms of the decided design criteria.

[0015] The system including means for applying funds from a credit card or other payment or finance service through a banking source associated with the sale of the product or service. Funds relate to the product or service thereby permitting a product with design criteria to subsequently be manufactured according to the selected design criteria and sold according to those criteria.

However, the discussion of voting on "different criteria of the product" and the "selected design criteria" does not put one of ordinary skill in the art in possession of any knowledge of "presenting a sample of an uncompleted version of the work product" as required by the claims. The Blumberg publication is extremely vague as to how this voting on "different criteria" is effected, and it cannot be said that Blumberg here discloses a sample of an uncompleted version. Even if one assumes (for the purpose of argument only, as it is apparently assumed in the reasoning of the rejection) that Blumberg discloses presenting a list of "different criteria" for which votes may be cast, that would still not disclose "presenting a *sample* of an *uncompleted version* of the work product". It is submitted that one of ordinary skill in the art does not equate a listing of "different criteria" with "presenting a sample of an uncompleted version of the work product".

With respect to the reference to Milsted at col. 81 at about line 47, as discussed below, the discussion of a "preview of sample Digital Content clips" does not disclose an "uncompleted version of the work product", but a sample of a clip that would be understood by one of ordinary skill in the art to be "completed". Since Blumberg is directed to "different criteria"

Appln. No. 10/824,716
Amendment dated May 13, 2008
Reply to Office Action mailed March 5, 2008

and not an uncompleted version, and Milsted discusses a sample of a clip that is also not described as being "incomplete", there is no reason for one of ordinary skill in the art considering these publications to arrive at the claim requirement of "presenting a sample of an uncompleted version of the work product". It is therefore submitted that the allegedly obvious combination of Milsted and Blumberg would not lead one of ordinary skill in the art with no knowledge of the applicant's disclosure to the requirement of "presenting a sample of an uncompleted version of the work product during a time period in a location capable of being accessed from the network".

The Response to Arguments section further contends that:

The applicant argues that a product under Blumberg's invention would not be cancelled because broad participation in its design would ensure its marketability. This does not address the case of insufficient participation. The examiner believes that the claim language at issue is "initiating no creation, based on a tabulation of votes received". Blumberg teaches decreasing the quantity produced in response to votes.

Blumberg also teaches in page 4 paragraph 60 that each decision can be voted upon until there is a large enough number of buyers and/or investors. A person of ordinary skill in the art would interpret this to mean that in the case of insufficient response, nothing happens to the work product. As it is old and well-known to cancel an offer due to lack of response, it would have been within ordinary logic and reasoning to interpret Blumberg's discussion of eliminating risk to mean that a project with insufficient investor interest would not be manufactured or created, thus eliminating risk of unsellable inventory. A method step of no creation will produce predictable results with a reasonable expectation of technical success.

Looking to the Blumberg patent application publication at paragraph [0060], it states (emphasis added):

[0060] Each business decision of the group can be voted upon until there is a large enough number of buyers and/or investors agreeing to all the specifications and the desired price point to create an economy of scale with the largest number of presold units and/or investors. During the process the group can vote to price out the specified product with different factories and manufacturers that normally produce such products. At the point where a manufacturer's price is

Appln. No. 10/824,716

Amendment dated May 13, 2008

Reply to Office Action mailed March 5, 2008

equal or less than the voted upon and agreed to price, then the purchasers' credit cards, or other financial instrument, would be charged for the specifically designed television to be purchased as agreed to through the use of the invention. Similarly, investors credit cards or other financial instrument would be used to collect the investors money and the products, for example televisions, that are paid for by the investors will be marketed for sale to the general public as well as the list of other participants in the design who did not agree to final specifications of the televisions that were actually produced.

It is submitted that the Blumberg patent application publication does not address what would happen if there was "insufficient participation". The Blumberg publication discusses voting upon "each business decision" *until* there is agreement among a large enough number of buyers and/or investors. This does not address an insufficient level of response as asserted in the Response section of the Office Action, but only a large enough number of buyers and/or investors *in agreement* with each other among the participants. There is no indication that there is any threshold level of overall participation or interest that is applied by the Blumberg system.

The specification of the present patent application points out that the invention provides the creator of a work product, such as an artist, the ability to present a portion or sample of a work that has not yet been created (except for the sample) to potential customers to gauge the interest in the customers in the completed work. The benefit of the invention is that the artist is able to limit the time and effort that is spent on a work before actually determining if there is a market (or potential market) for the work. If the interest is there, then the artist may complete the work knowing that the likelihood of a market for the completed work may be there. Due to the unique character of some works, such as paintings or music, a potential customer is not able to assess the desirability of having the work unless a sample portion is provided.

Appln. No. 10/824,716

Amendment dated May 13, 2008

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Tuning to the claims, claim 1, particularly as amended, requires (emphasis added):

presenting *a sample of an uncompleted version* of the work product during a time period in a location capable of being accessed from the network;

receiving at least one vote from a node connected to the network, the at least one vote being associated with one of the proposed version of the work product and a content preference; and

initiating one of: *completion of the uncompleted version of the work product, creation of a work associated with the content preference*, and no creation, based on a tabulation of votes received.

Claim 16 requires, in part, "receiving one or more votes from one or more nodes connected to the location over the Internet, the one or more votes associated with one or more of the one or more uncompleted proposed version of the one or more work products and one or more content preferences" and "notifying one or more of the one or more authors that a threshold for initiating completion of one or more of the one or more uncompleted versions of the work products or creation of one or more content preferences has been reached based on the received one or more votes".

With respect to claim 1, the rejection of the Office Action concedes that:

Blumberg does not explicitly teach samples, although samples could be included in design criteria.

Initially, it is submitted that the allegation that "samples *could be* included in design criteria" (emphasis added) is not relevant to the discussion of obviousness, as the Blumberg patent does not disclose that design criteria includes samples. Whether the design criteria of Blumberg includes samples is merely speculative. A rejection cannot be based upon what the art *might* disclose or *might* include.

Appln. No. 10/824,716

Amendment dated May 13, 2008

Reply to Office Action mailed March 5, 2008

The rejection further asserts that:

Milsted teaches presenting a sample of a proposed version of the work product during a time period in a location capable of being accessed from the network in col 81 lines 45-50. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Blumberg to add presenting a sample of an uncompleted version of the work product during a time period in a location capable of being accessed from the network in order to give the buyer a taste of the goods and promote sales.

However, as noted above in the remarks addressing the "Response to Arguments", the Milsted patent does not disclose "presenting a sample of an *uncompleted* version of the work product" as required by the language of claim 1. Looking to Milsted at col. 81, lines 45 through 50, it states there that:

Prior to this point, all interaction is between the Web Server for the Electronic Digital Content Store(s) 103 and the Browser 191 on the End-User Device(s) 109. This includes preview of sample Digital Content clips. Digital Content clips are not packaged into SC(s) but instead are integrated into the web service of the Electronic Digital Content Store(s) 103 as downloadable files or fed from a streaming server.

Nothing in this portion of the Milsted patent discloses that "a sample of an *uncompleted version* of [a] work product" is being made available. It is submitted that one of ordinary skill in the art, considering the Milsted patent, would believe that a sample of complete or completed piece of digital content is being made available.

The rejection further states:

In paragraph 61 page 5, Blumberg teaches that the risk of insufficient investor interest is removed by the invention, but Blumberg does not explain why. Blumberg does not explicitly teach canceling or "no creation" for a product which draws few votes. Blumberg also teaches in page 4 paragraph 60 that each decision can be voted upon until there is a large enough number of buyers and/or investors. A person of ordinary skill in the art would interpret this to mean that in the case of insufficient response, nothing happens to the work product. It would have been obvious to a person of ordinary skill in the art at the time of the invention to interpret Blumberg to mean

Appln. No. 10/824,716
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that a project with insufficient investor interest would not be manufactured or created, thus eliminating some risk.

As noted above in the remarks addressing the "Response to Arguments", looking to the Blumberg patent application at the cited paragraphs, it is submitted that one of ordinary skill in the art considering Blumberg would understand that because Blumberg provides input by investors for the design criteria, that there would not be any need to "cancel" the manufacture of the product. Blumberg states at paragraph 61 that:

[0061] There is formed a pool or group of people interested in purchasing or investing in the manufacture, marketing and sales efforts of a specific product. A product is designed with specific design criteria chosen through the invention during the course of the design and approval process. A product is manufactured with a large number of units presold so that an economy of scale is created which allows a significantly lower price point than would be feasible without the invention. An economy of scale is created because some crucial and normal market risks are removed. For example, the risk of a low speed of sales and the risk of insufficient investor interest is removed by the invention.

Thus, since the product is produced with all of the features that have been chosen by the customers who have ordered it, one of ordinary skill in the art would recognize that there would be no purpose in canceling the production of the product.

It is therefore submitted that the cited patents, and especially the allegedly obvious combination of Blumberg, Milsted, and the Official Notice, set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 1, 11 and 16. Further, claims 2 through 10 12 through 15, which depend from claims 1 and 11 also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

Withdrawal of the §103(a) rejections of claims 1 through 16 is therefore respectfully requested.

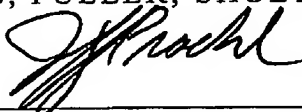
Appln. No. 10/824,716
Amendment dated May 13, 2008
Reply to Office Action mailed March 5, 2008

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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